



TelLAWCom Labs Inc.

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May 30, 2011

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St. SW, Rm. TW-A325
Washington, D.C. 20554

**Re: Application of AT&T and Deutsche Telekom AG (Applicants) for
Consent to Assign or Transfer Control of Licenses and Authorizations
(WT Docket No. 11-65)**

Dear Ms. Dortch:

Attached is the PETITION TO DENY by TelLAWCom Labs Inc. This Petition asks the question whether *Merger Conditions* will be part of the AT&T / T-Mobile acquisition. Indeed, from AT&T's June 2000 "271 approval" through the Ameritech and Bell South acquisitions, promises, guarantees and preconditions have been part of the bargain. So how have previous conditions worked out for competitors and the public? As this Petition shows, AT&T's previous merger commitments were significantly ignored. Therefore, *this* proposed merger should be denied until such time as Applicants can *prove* they will honor any new commitments. In the alternative, the FCC must back up new merger conditions with *real* performance penalties that can be enforced.

Supporting History and Examples

For over a decade AT&T has been a wholesale supplier of "network elements" to competitors who use these network elements to construct finished services for their customers. As part of the deal, AT&T promised to promptly process service orders, render accurate bills, and provide accurate call detail records (CDR). In order to assure AT&T did not "back slide" in performance to its competitors, AT&T agreed to pay liquidated damages (also called PMs) if AT&T's performance fell below certain pre-agreed levels. AT&T also promised to provide a level of support to competitors in "parity" with AT&T's own customers and to be monitored regarding that performance.¹ So how did AT&T do on these *previous* merger commitments?

Consider the existence of [TelLAWCom Labs Inc.](http://www.tellawcomlabs.com) If AT&T's previous merger commitments were working, there would almost be no reason for a company like it to exist. Yet it does exist, and AT&T has kept it, and over 40 clients, very busy. The following are samples of experiences which may be indicators of future AT&T performance if this merger request is approved.

¹ The FCC noted in its approval of SBC's 271 application: "*Working in concert with the Texas Commission, we intend to monitor closely SWBT's post-approval compliance..... We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to SWBT's entry into the Texas long distance market*". – Memorandum Opinion and Order in FCC Docket No. 00-238, Application by SBC Communications to Provide In-Region InterLATA Services in Texas, June 30, 2000, at 436.

- The former principals of *Delta Phones Inc.* (DPI) retained TelLAWCom Labs, Inc. to produce a report of issues in the provision of service from AT&T to DPI. TelLAWCom Labs obtained AT&T data for the report, in part through Public Information Act (PIA) requests. As part of one PIA request with the Public Utility Commission of Texas (PUCT), we received AT&T service orders that were previously filed under confidential cover in Docket 28041 (*Complaint of Delta Phones vs. AT&T*). Without question, the orders showed evidence of tampering by AT&T. The kind of service order tampering noted could have easily been used deliberately to limit or avoid damages payments to DPI or other CLECs. We have noted the same abnormalities with other CLEC clients.²
- In other previously confidential documents obtained from the PUCT, we learned that AT&T paid liquidated damages (for poor performance) to *AccuTel* in the amounts of \$196,235.57 and \$605,792.50 in the years 2001 and 2002 respectively. This equates to about \$50,000 a month during 2002.³ By January 2003, the PM payments to AccuTel dropped to only \$14,000 a month with no explanation. It has since been learned that this sudden reduction coincided with an edict by SWBT management to “eliminate liquidated damages payments by any means possible.” Please follow the link below or refer to the sworn affidavit in [Texas PUC Docket 30463 Item #8, Affidavit of Demetrius T. Davis Sr.](#)
- *Connect Paging Inc.*, d/b/a *Get-A-Phone*. (GAP) filed a complaint with the PUCT when AT&T threatened to shut them down over an alleged amount owed of \$350,000. GAP countered that some \$550,000 in various amounts was owed by AT&T due to overbilling and CDR issues associated with AT&T's Operational Support System (OSS). The PUCT abated the proceeding for two months so TelLAWCom Labs could complete an audit. After completing its report, GAP and AT&T settled, not for \$550,000 but for \$700,000.⁴
- *Premiere Network Services Inc.*, (Premiere) was literally run into bankruptcy by AT&T.⁵ In the *Premiere* case, AT&T effectively bought its way out of a large claim and avoided having its dysfunctional OSS system placed on trial as the root cause of the claims. AT&T has stated publicly that “17 cases” against AT&T were brought by Premiere.⁶ AT&T omits the fact however that many of these cases included allegations by AT&T's own employees that AT&T misrepresented data, destroyed data and altered evidence.⁷

² FCC Docket No. 00-238, Memorandum Opinion and Order, Application of SBC Communications to Provide InterLATA Services in Texas, at 428 states: “*The Department of Justice states, and we agree, that the reliability of reported data is critical, and that properly validated metrics must be meaningful, accurate and reproducible.*” The FCC further affirmed in the same Order: *In particular, the raw data underlying a performance measurement must be stored in a secure, stable, and auditable file if we are to accord a remedy plan significant weight.*”

³ See PUCT Docket 27414 and 29828, *AccuTel vs. SWBT*, Affidavit of Penelope Polly Barfield, CFO.

⁴ See PUCT Docket 32897, *Petition of Connect Paging Inc. d/b/a Get a Phone* (GAP) dated 6/30/06.

⁵ Premiere was not an insignificant small business as AT&T would have this Commission believe. Its customers included American Airlines, Southern Methodist University, VarTec Telecom, USAA and others. Its Board members included such people as the Chief of Staff to the Chairman, Texas Public Utility Commission, a former Air Force General, the Director of the United States Mint, and a former AT&T executive. If a company like this could not survive, what chance did anyone else have? Ten years later and we all know the answer.

⁶ “*When Mr. Wrobel was Chairman and CEO of Premiere Network Services, Inc. (“Premiere”), Premiere filed 17 formal and informal complaints at the Public Utility Commission of Texas against SBC from 1998 until 2005, when Mr. Wrobel lost control of the company when its bankruptcy was converted to a Chapter 7 proceeding (liquidation).*” - Applicants' May 18, 2011 Objection to Confidentiality filed in this Docket, No. 11-65.

⁷ See testimony of Renee Dodd and Demetrius Davis, former SBC / AT&T employees in PUCT Docket 30463, [Items #8](#) and [#9](#) respectively. Ms. Dodd also testified in the Premiere bankruptcy Case No. 04-33402-HDH in United States Bankruptcy Court for the Northern District of Texas, Dallas, Division. Ms. Dodd also complained to the FCC while employed with AT&T.

Much of the story can be found in PUCT Dockets [30463](#) and [30697](#) and in Case No. 04-33402-HDH in United States Bankruptcy Court for the Northern District of Texas, Dallas, Division. Over vehement and well-documented objections, AT&T made an offer to the Trustee in *Premiere* totaling about \$1.5 million (\$640,000 in case plus release of all claims) to get rid of *Premiere* and end the 5 year history of constant AT&T performance payments which follow on the following page.

In the AT&T settlement, the Trustee dropped several adversary proceedings pending against AT&T in court as well as all claims pending at the PUCT. While AT&T's actions no longer offer the principals of *Premiere* any avenue to financial recompense for a decade of battles against AT&T, their experience might still serve a purpose by showing what AT&T is capable of doing to its competitors. These examples represent only the tip of the iceberg. Even at this Commission, complaints about AT&T's practice of running roughshod over competitors goes back a long time.⁸

Note that the figures that follow do not include an estimated \$3.5 million in PM damages due at the time to *Premiere*, only actual refunds by AT&T for their non performance.

It's Not Just TelLAWCom Labs: Others Confirm Serious AT&T Issues

CyberControls is an independent specialist in data forensics. CyberControls was retained by *Premiere* to investigate the PM reporting practices of AT&T through a forensic examination of AT&T service order data.⁹ The results of the [CyberControls report](#) contributed to millions in claims being filed against AT&T in the *Premiere Network Services Inc.* bankruptcy.¹⁰ CyberControls concluded that 46% of *Premiere*'s service orders had been changed to SBC's internal "SS" code to avoid payment of PM damages.¹¹

In its conclusions at the top of Page 3 of its final report, CyberControls observed:

"SBC's explanation for numerous irregularities is highly questionable" and that the "only party that benefits from this continual practice (inserting the "SS" code) was SBC."

This practice was further confirmed by former AT&T employees who swore under oath, that they personally engaged in this process, and who also named their AT&T superiors who instructed them to do so.¹² Please follow the link below or refer to [Texas PUCT Docket 30463, item #7, Affidavit of Renee Dodd](#).

⁸ In its Memorandum Opinion and Order adopted 6/30/2000 in the matter of Docket No. 00-238, Application of SBC to Provide In-Region InterLATA Services in Texas, the FCC noted the following on Page 212 at 431: "*Several commenters offer specific allegations that SWBT has engaged in anti-competitive behavior. We have previously stated that we will not withhold section 271 authorization on the basis of isolated instances of allegedly unfair dealing or discrimination under the Act. For example, several commenters suggest that misconduct of SWBT such as intransigence, delaying tactics, perpetual litigation (and sanctionable tactics during litigation, such as destruction of or withholding documents) and the refusal to pay reciprocal compensation, undermines confidence in SWBT's post-grant conduct. (See Sprint Texas I Comments at 6-8, BlueStar Texas I Comments at 6; Allegiance Texas I Comments at 14-16, Connect Texas I Comments at 6-8. e.spire Texas I Comments at 6, CompTel Texas I comments at 9, AT&T Texas I Comments at 89-95; WorldCom Texas I Comments at 62-63; Covad Texas I Comments at 49-50, 58, 60-62; NALA / PCA Texas I Comments at 3.)*

⁹ See Texas PUC Docket 30463 *Complaint of Premiere Network Services Against AT&T* dated 11/29/04, Exhibit 4.

¹⁰ Case No. 04-33402-HDH in United States Bankruptcy Court for the Northern District of Texas, Dallas, Division.

¹¹ The detailed CyberControls report can be found on the PUCT web site in Docket 20400, [Item No. 691](#).

¹² Also see the testimony of former SWBT employee Renee Dodd in the *Premiere* bankruptcy, Case No. 04-33402-HDH in United States Bankruptcy Court for the Northern District of Texas, Dallas, Division, where she states under oath that she changed data, typed orders to completion, and withheld discovery in Docket 28209 at the behest of her management, identified by name.

Is It Any Wonder WHY Premiere Filed 17 Complaints Against AT&T?

May 2000	\$553,000. ¹³	paid by SBC due to OSS problems (USAA and SMU)
April 2001	\$240,000. ¹⁴	paid by SBC due OSS issues (SMU and VarTec)
October 2001	\$167,000. ¹⁵	paid by SBC due to loss of ALL Call Detail records.
December 2001	\$ 77,000.	PM Payment by SBC - email obtained in discovery
October 2002	\$ 80,000. ¹⁶	paid by SBC loss of ALL records for one customer.
November 2002	\$108,975. ¹⁷	paid by SBC for loss of ALL records.
Spring 2003	\$360,000 ¹⁸	refunded by SBC due to botched disconnections
March 2003	\$6,408. ¹⁹	paid by SBC by order of the Texas Commission.
November 2004	\$32,451 ²⁰	paid by SBC for exclusion of data
January 2005	<u>\$34,242</u> ²¹	paid by SBC after Premiere PUC Complaint

Total \$1,659.076

Still in dispute at time Premiere forced into bankruptcy: \$1,362,000.²²

Unpaid but confirmed for single large customer: \$195,000.

Grand Total \$3,216,076.

Estimated SBC billing over 60 months = \$60K per month

Average Confirmed Overbilling = \$27,651. (46% average SBC overbilling rate)

Average Including Disputes = \$53,601 (89% average SBC overbilling rate)

Conclusion: *SBC error rate on billing to Premiere was between 46% and 89%.²³*

Note: Premiere averaged \$3 million in annual revenues. The disputes above do not include millions in PM Damages. Most AT&T competitors can tell a similar story.

¹³ Of this claim, it was later found that SBC underpaid Premiere no less than \$500,000 in reimbursements.

¹⁴ Of this claim, it was later found that SBC underpaid Premiere no less than \$455,000 in reimbursements.

¹⁵ SBC underpaid Premiere because the baseline period used was a period where SBC had not corrected all of problems.

¹⁶ Premiere originally lodged a \$230,000 claim and "negotiated" with SBC to a level of \$80,000.

¹⁷ SBC agreed to pay only this amount – out of a Premiere invoice to them for \$364,000.

¹⁸ SBC first initiated collection proceedings and denied all problems. SBC still owed another \$195,000 due to same problem.

¹⁹ SBC first agreed with Premiere that \$47,000 was due, but changed after consultation with their finance department.

²⁰ This adjustment to Premiere's bill was made nine months after SBC was ordered to do so. SBC would not have made this adjustment if Premiere had not reported SBC to the PUCT for non-compliance with Order 48 as outlined in this response.

²¹ This additional adjustment was made only after Premiere Employees filed a formal complaint with the PUCT.

²² Total includes \$500,000 held back by SBC in 5/2000 adjustment, \$455,000 for 4/2001 adjustment, \$195,000 for new PointOne claims (SBC has already paid \$360,000 but refuses to hear additional \$195K found after Chapter 11 filing.

²³ This figure is consistent with SBC performance. In 2002, the last year in which these adjustments were voluntarily made by SBC, of the \$603,000 billed by SBC, ultimately only \$145,000 was paid in cash by Premiere. This represents an overbilling rate of 75% by SBC to Premiere.

AT&T Modified Data on Performance to Competitors

TelLAWCom Labs, Inc. has caught AT&T again and again omitting, modifying or deleting data used to compute damages payment penalties to its competitors, simply to cover its own non performance.²⁴ A few examples include:

- Local Phone Services Corporation. AT&T claimed they owed \$4800 in PM liquidated damages, an amount that later, after a challenge by our firm, turned out to be \$80,000.
- Cypress Communications. In this case AT&T claimed to owe \$7800 of what turned out to be \$101,000.
- In another case, Rosebud Communications, TelLAWCom Labs, Inc. asked AT&T why one of its clients had never received *any* liquidated damages at all. In the following two months \$50,000 appeared out of no where on that client's bill. When questioned by TelLAWCom Labs, Inc., AT&T offered no explanation.²⁵
- In February 2004, Order No. 48 of PUCT Docket 20400 Ordered AT&T to refund *all Texas CLECs* for certain AT&T non performance. AT&T did not pay until November of that year, nine months after the Order was issued – and only after TelLAWCom Labs, Inc. turned them in. A few months after that, TelLAWCom Labs, Inc. initiated a formal complaint challenging the computations by AT&T and, “oops,” AT&T found that they had underpaid competitors by another million dollars due to an “arithmatic error.”
- AT&T excluded \$1.1 million in PM damages to *Best Phones* by use of the K-Table, despite constant complaints about its performance. When Best Phones complained, it was denied on a legal technicality, even though AT&T refunded all other CLECs in the other four AT&T Southwest States after it lost its appeal in the 5th Circuit.²⁶

AT&T is Driving Other Wireless Providers Out of Business - at This Moment!

TelLAWCom Labs has provided technical consulting assistance (not competitive or marketing strategies) to two wireless CMRS clients. One provider, *Awesome Paging*, is being threatened with eminent disconnection by AT&T - today.²⁷ The other provider, ASAP Paging, has already been forced out of business. In both cases, AT&T over-billed these companies out of existence, due to issues rooted in the AT&T OSS system. TelLAWCom Labs, Inc. has been involved with ASAP and Awesome Paging since 2005 in trying to get this issue corrected. Since that time AT&T has steadfastly refused to fix this issue. Instead, every couple of years, AT&T comes up with new *legal* theories in an attempt to shore up its illegitimate and unsubstantiated claim rather than write it off. The fact that AT&T would try a stunt like this with a wireless competitor at the very time it is seeking forbearance in the wireless arena speaks volumes about what they would do if the T-Mobile merger were approved.

²⁴ The K-Table was designed to take into account random variations associated with the sample size of orders used to measure AT&T performance. It was discovered however by the Texas Commission that AT&T was taking the K-Table exception upwards of *30 months in a row*. The Commission ordered AT&T to refund its competitors in Order 45 of Docket 20400, which AT&T fought for four years through the courts, while many of its competitors went bankrupt. When AT&T finally paid, the resultant payments to AT&T's competitors were understated until formally challenged by TelLAWCom Labs.

²⁵ *Rosebud Telecommunications* was never paid liquidated damages at all, but payments coincidentally commenced and continued when AT&T became aware TelLAWCom Labs, Inc. had begun a PUCT inquiry.

²⁶ See KCC Docket 01-SWBT-872-COM, *Best Phones Against Southwestern Bell Telephone LP d/b/a AT&T Kansas*

²⁷ See April 28, 2001 letter from AT&T to Awesome Paging threatening to disconnect Awesome Paging customers on May 31, 2011, filed here as Exhibit 1 to our May 20, 2011 Reply to AT&T's Objection to Confidentiality.

AT&T Tainted Official Audits

Evidence uncovered in Open Records Act requests shows that an AT&T attorney (and former PUCT employee) influenced the outcome of at least one official Public Utility Commission of Texas (PUCT) audit in favor of AT&T.

As stated earlier, TelLAWCom Labs, Inc. is often employed to verify the accuracy of state and federally mandated Performance Measure (PM) data payments by AT&T to its competitors. In the course of its business TelLAWCom Labs, Inc. filed several “open records” requests (known in Texas as Public Information Act or PIA requests) with the *Public* Utility Commission of Texas. The documents obtained indicate that a former PUCT employee-turned-AT&T-lawyer, may have used her previous relationship with the PUCT to enrich their present employer.

Since 2002, the PUCT has conducted two major audits of AT&T’s PM payments. At least one was unquestionably tainted by AT&T. According to records released under the PIA, AT&T’s employee-attorney went far beyond the traditional attorney client relationship. She actively helped define specifications for at least one PUCT audit, then wrote a Final Order approving that audit. The Order she wrote, [Order No. 49](#) in Docket 20400, absolved AT&T of a potential \$64 million liability, absent any outside comment or outside review whatsoever. See the link below or refer to [PUCT Docket 36843](#).²⁸ The issues raised in Docket 36843 include:

- (a) The improper award of a \$200,000 state contract absent any bid process.
- (b) No posting or opportunity for public review, whatsoever.
- (c) The drafting of a Final PUCT Order by AT&T, a clearly biased Party and subject of the audit... *approving the audit before the audit was even filed with the PUCT.*
- (d) That Final Order in net effect absolved AT&T of a \$64 million liability.
- (e) The Order was written by AT&T, sent to PUCT legal, forwarded *unchanged* to the Commissioners, and was subsequently signed by them *unchanged*.

Summary

This merger must be denied for all of the obvious competitive reasons. It's not difficult: Fewer providers mean higher prices and less choice. That point should be so blatantly apparent in fact that we have not even argued it here. Instead, we offer additional justification to deny the merger based on the fact that AT&T's previous merger commitments were largely ignored. We have *many* more examples if called upon to provide them.²⁹

²⁸ See PUCT Docket 36843: *COMPLAINT RE MANIPULATION OF STATE MANDATED PERFORMANCE MEASURE AUDITS OF AT&T AND REQUEST FOR AN INVESTIGATION OF THE PUBLIC UTILITY COMMISSION OF TEXAS*

²⁹ Section 271(d) of the Communications Act of 1934 provides the Commission with different enforcement avenues. First, section 271(d)(6)(A)(iii) allows the Commission to issue a “stand-still” order which could prohibit the BOC from enrolling additional subscribers for its long distance service and from marketing and promoting its long distance service. In extreme cases, section 271 authorizes the Commission to revoke the BOC's authority to provide long distance service altogether. Additionally, in accordance with section 271(d)(6)(A)(ii), the Commission may assess monetary forfeitures against non-compliant BOCs pursuant to section 503(b) of the Act by issuing a notice of apparent liability. Finally, the Commission may issue an order requiring a non-compliant BOC to correct any deficiencies pursuant to section 271(d)(6)(A)(i). Source [FCC Web Site](#). The FCC site also states “Any person with information indicating that a BOC may no longer be in compliance with section 271 may contact [Hillary DeNigro](#), Chief, Investigations and Hearings Division, or [Theresa Z. Cavanaugh](#), Deputy Chief, Investigations and Hearings Division. They may be reached at (202) 418-1420.”

This proposed merger must therefore be denied until such time as Applicants can *prove* they will honor any new commitments. In the alternative, the FCC must back up new merger conditions with *real* performance penalties that will be enforced.

Yours truly,



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Qualifications of Commenter: TelLAWCom Labs President [Leo A. Wrobel](#) has over thirty years experience in the telecommunication industry and holds degrees in Telecommunications Systems Technology, Electronics Systems Technology, and Business and Public Policy. His employment history includes AT&T Long Lines and Dallas-based Lomas & Nettleton Information Services, then the largest mortgage banker in the world. Mr. Wrobel was responsible for the first microwave bypass shot in Dallas to a financial organization, and was also the first in Dallas to run T1 telephone traffic over the public cable television system. He was a pioneer in carrier co-location, and was the first company in the United States to locate a computer disaster recovery company in a central office in 1986. Leo also facilitated the largest SONET/ATM network ever installed in Texas, and actually secured “unbundled” pricing for a \$75 billion client the year *before* the 1996 Federal Telecom Act. Leo is the author of twelve [books](#), beginning in 1990 with *Disaster Recovery Planning for Telecommunications* (Artech House Books) and including other titles such as *Understanding Emerging Network Services, Pricing and Regulation*. His most recent works include “*Business Resumption Planning Second Edition*” and “*Disaster Recovery Planning for Communications and Critical Infrastructure*” and over [800 trade articles](#). Wrobel has conducted telecommunications seminars on Emerging Broadband for over twenty years and has spoken at such noteworthy forums as the ICA SuperCom conference, ACUTA, CCMI McGraw Hill, IAEM, ACP and many others. He has appeared on television news programs as an expert on telecommunications policy and technology and has lectured worldwide in such places as [Beijing China](#), Tel Aviv, Israel, Santiago, Chile. He served as a City Councilman and Mayor, [City of Ovilla Texas](#), from 1987-1997.

Certificate of Service

I hereby certify that I caused true and correct copies of the foregoing to be served as follows, commensurate with the filing of this Petition with the FCC:

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